

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CARL EDELSON, -----X

Plaintiff-Appellant, :

-vs-

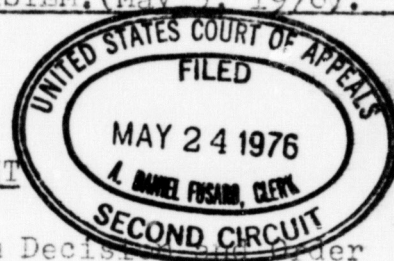
DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, AND SOCIAL SECURITY
ADMINISTRATION,

Defendants-Appellees. -----X

appendix
PRE-ARGUMENT STATEMENT

76-6086
DOCKET NUMBER:

APPEAL FROM THE U.S.D.C.
S.D.N.Y. (GAGLIARDI, D.J.)
DENYING REFUND OF MONIES
FROM SOCIAL SECURITY
SYSTEM. (May 5, 1976).



This is an Appeal from a Memorandum Decision and Order of the United States District Court, Southern District of New York (GAGLIARDI, D.J.) rendered May 7, 1976, denying the plaintiff's petition to recover from the Social Security Administration all his monies deducted from his wages under the Social Security System, and take him off the Social Security System, without forcing plaintiff to retire at age 65 (August 4, 1976).

QUESTION INVOLVED ON APPEAL

"WHETHER CONGRESS HAS THE CONSTITUTIONAL RIGHT TO FORCE PLAINTIFF TO BECOME AN INVOLUNTARY PARTICIPANT IN THE SOCIAL SECURITY ACT (26 U.S.C.A. 3101) by directing THE INTERNAL REVENUE SERVICE TO DEDUCT FROM HIS WAGES A PERCENTAGE OF HIS EARNINGS UNDER THE GUISE THAT THIS MONIES IS FOR PLAINTIFF'S RETIREMENT BENEFITS?"

CONTENTIONS

The Government cannot force plaintiff to become a retiree and accept benefits, without plaintiff being allowed to name his own beneficiary in case of his death.

United States District Court **JUDGE GAGLIARDI**

FOR THE

SOUTHERN DISTRICT OF NEW YORK

75 CIV. 493 '7

PRO SE

CIVIL ACTION FILE NO. _____

CARL EDELSON,

Plaintiff

v.

**Department of Health, Education and
Welfare
Social Security Administration.**

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

CARL EDELSON,

Pro se,
~~attorney~~ plaintiff's attorney, whose address **is 151 West 16th Street, New York, N.Y. 10011,**

an answer to the complaint which is herewith served upon you, within **60** days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT,

G. HARBISON Clerk of Court.

Deputy Clerk.

Date: **OCT 7 1975**

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL EDELSON,

Plaintiff,

v.

DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,

Defendant.

75 CIV. 4937
CIVIL ACTION FILE NO.

COMPLAINT

TO THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK:

The Plaintiff, CARL EDELSON, by this Complaint, alleges
as follows:

- 1: That he is a Citizen of the United States of America
by virtue of Birth;
- 2: That he was born in New York City on August 4th, 1911.
- 3: That he applied to the Department of Health, Education
and Welfare, (Social Security Administration) for a determination
of the monies deducted from his wages from employment, and he
received a reply which is set forth in a letter attached hereto
marked Exhibit "A".
- 4: That he thereafter replied to such letter, which
is attached hereto, marked Exhibit "B".
- 5: That he received a reply thereto, in a letter,
which is attached hereto, marked Exhibit "C".
- 6: That plaintiff now by this complaint, alleges that
he in law and in fact, is entitled to an option whether he
desires to accept the monthly benefits set forth in Exhibit "A",
or to a refund in a lump sum of the monies paid in by deductions
from his wages of employment, rather than accept periodic pay-
ments monthly.

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7: That plaintiff at no time during his period of employment requested to be placed on the Social Security Rolls, and give permission to the Social Security Administration to take deductions under said Act, in that, plaintiff at no time requested to be a voluntary participant in such act, or did he request to be placed on benefits under retirements at the time he would be of age to obtain such relief.

8: That plaintiff does not challenge that part of the Social Security Act where such act is voluntary on the part of the participant, but plaintiff does challenge that part of said Act which implies an involuntary act on the part of the plaintiff, in that, it is plaintiff's contentions that Congress has no power to legislate on the right of the plaintiff to become an involuntary participant therein.

9: That plaintiff now alleges that he is entitled to a lump sum of the monies paid in to the Social Security Act, and to have his name removed from the contributors to such Act.

10: That plaintiff is gainfully employed, and has no intention in retiring at any age, and does not desire the Government Agency-the Social Security Administration, to keep in escrow his monies earned, and therefore, wants the return of all his monies refunded to him in one lump sum.

WHEREFORE, for the reasons set forth above herein, the plaintiff respectfully prays this Court for an Order directing the return of said monies, and for such other and further relief as he may be entitled to under the Laws and Constitution of the United States, and etc.

Dated: October 7, 1975,
New York, N.Y.

Carl Edelson - Pro Se

Social Security Estimate of Benefits

Exhibit "A"

Social Security Office 1657 Broadway New York, N.Y. 10019

Carl Edelson
151 W. 16 St.
New York, N.Y. 10011

August 18, 1975

TELEPHONE: 586-2813
EXT.: 819

HOURS: 8:30 to 4:30

Dear Mr. Edelson:

We are pleased to tell you that, according to our records and the date of birth you gave, your monthly payment will be about \$ 253.30 beginning with the month of August, 1976 and at the age of 64 \$236.50.

We have estimated your benefit amount based on the earnings now shown on our records. Any social security earnings not yet recorded could, of course, increase the amount. We can tell you the exact amount and begin payments only after you apply for them.

You should apply for medical insurance benefits when you are within 3 months of age 65, even if you are working and intend to continue to work. To have medical insurance protection beginning with the month you are 65, you must apply during the 3-month-period before the month you are 65. If you apply in the month you reach 65, or after, your protection will not begin until 1 to 3 months later. If you do not enroll during this specified period, your next opportunity will not be until the first 3 months of the following year. An additional leaflet is enclosed which explains this and the Medicare program in more detail.

Questions about this letter can be discussed with any social security office by telephone. When you telephone, please have this letter nearby so you may refer to it. Please take this letter with you if you visit an office.

Sincerely yours,

N. Santiago
N. Santiago
Claims Representative

ls/ns

Enclosure

CARL EDELSON
PUBLIC ACCOUNTANT

151 WEST 16TH STREET
NEW YORK, N. Y. 10011
212-255-3138

Exhibit "B"

SYSTEMS
SERVICE
TAX RETURNS

August 23, 1975

Department of Health, Education
and Welfare
Social Security Administration
1657 Broadway
New York, N.Y. 10019

Re: Carl Edelson
SS# 252-40-5392

Attention: N. Santiago, Claims Representative

Sirs:

This is in reply to your letter of August 18, 1975, in which you state that based upon the records of my earnings that I would receive for retiring, about \$ 252.30, beginning with August, 1976, and, or, \$236. 50 at the age of 64.

May I respectfully request your cooperation in stating the amount of total earnings in my case upon which the above determination was made. It is my intention to make a claim for the total refund of all my earnings upon which the above determination was made, that is, I desire to be taken off the Social Security Rolls and have my money that was deducted from earnings returned to me. I do not desire to have any retiring benefits, in that, (1) I could not live on such benefits and (2) I do not expect to live long enough to collect any such benefits (3) I intend to work until I am deceased.

Be informed that I never voluntarily requested to have any deductions from my wages for purpose of Social Security Benefits, nor did I give any authority to have any contributions made to such Act. Therefore, ~~I desire to have the lump sum of monies deducted~~ from my wages returned to me. I have no objection to the Social Security Act, providing it is voluntary.

Your reply will be sincerely appreciated.

Sincerely,

Carl Edelson,
SS# 252-40-5392

Seal of Confidence



MEMBER OF AMERICAN COLLEGE OF ACCREDITED TAX ACCOUNTANTS

78902.66



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
1657 Broadway
NY NY 10019

September 29, 1975

REFER TO: Carl Edelson
unk.

Mr. Carl Edelson
151 W. 16 St.
NY NY 10011

Exhibit "C"

Dear Mr. Edelson:

The law does not provide for a refund of taxes correctly paid by the worker or self-employed person on earnings covered under social security. In order to challenge the law you would have to file suit in the Federal District Court.

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

SIP:n

United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURTHOUSE Annex
~~STANLEY~~ Plaza

NEW YORK, N. Y. 10007

1 St. Andrew

December 23, 1975

Mr. Carl Edelson
151 West 16th Street
New York, New York 10011

Re: Edelson v. Department of Health,
Education & Welfare
75 Civ. 4937

Dear Mr. Edelson:

In line with our telephone conversation of today, I am enclosing an original and two copies of a stipulation extending the Government's time to answer or make any motion with respect to the complaint until January 26, 1976. Please sign the original and one copy of the stipulation and return them to me. I will file the original with the Court.

Thank you for your courtesy in this matter.

Very truly yours,

THOMAS J. CAHILL
United States Attorney

By: Stuart I. Parker
STUART I. PARKER
Assistant United States Attorney
Tel. No.: (212) 791-1924

Enclosures

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
CARL EDELSON

Plaintiff

- against -

DEPARTMENT OF HEALTH, EDUCATION AND
WELFARE, SOCIAL SECURITY ADMINISTRATION

Defendant
----- X

STIPULATION & ORDER

75 CIV 4937 LPG

IT IS HEREBY STIPULATED AND AGREED by and between
~~the attorneys for~~ the respective parties, that the time of
the defendant within which to answer or make any motion with
respect to the complaint herein is hereby extended
from December 23, 1975 to and including
the 26th day of January 1976.

DATED: NEW YORK, N.Y.
December 23, 1975

Carl Edelson
Plaintiff

THOMAS J. CAHILL by Stuart A. Parker
United States Attorney
Southern District of New York
Attorney for Defendant

SO ORDERED:

U.S.D.J.

TO: Carl Edelson,
151 West 16th St.
New York, NY 10011

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906- 05 of June 93⁰ per [Signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL EDELSON,

Plaintiff,

- v -

DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE and SOCIAL SECURITY
ADMINISTRATION,

Defendants.

:

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ANSWER

75 Civ. 4937 (LFG)

The defendant, Department of Health, Education and Welfare, Social Security Administration, by its attorney, Thomas J. Cahill, United States Attorney for the Southern District of New York, for its answer to the Complaint:

1. Denies the allegations in paragraphs 6 and 9.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7, except admits that plaintiff has not yet filed an application for old-age insurance benefits and that plaintiff's payment of taxes pursuant to the Federal Insurance Contributions Act, 26 U.S.C. §3101 et seq., is not voluntary.

3. With regard to paragraph 8, admits that plaintiff is challenging the legality of the Social Security Act.

4. Denies the allegation in paragraph 10 that the defendant is holding monies of the plaintiff in escrow.

FIRST AFFIRMATIVE DEFENSE

5. The Court is without subject matter jurisdiction.

SECOND AFFIRMATIVE DEFENSE

6. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendant demands judgment dismissing the complaint, together with the costs and disbursements of this action and such other and further relief as is just and proper.

Dated: New York, New York

January 26, 1976

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Defendants

By:

Stuart T. Parker
STUART T. PARKER
Assistant United States Attorney
Office & P. O. Address,
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1924

TO: CARL EDELSON
151 W. 16th Street
New York, New York 10011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL EDELSON,

Plaintiff,

-v-

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, AND SOCIAL SECURITY
ADMINISTRATION,

Defendants,

TRAVERSE

75 Civ. 4932

The Complainant, Carl Edelson, hereinafter referred to as the "Petitioner", answers the Defendants, as follows:

1: The issue before this Honorable Court is strictly whether or not petitioner can be compelled to be a participant in the Social Security Act, and be compelled to have monies deducted from his weekly earnings and be held by the Social Security Administration until the time rolls around that petitioner retires when he reaches the age of 65 ?

2: The issue before this Honorable Court is whether or not this Court has jurisdiction over the subject matter ?

3: The issue before this Honorable Court is whether or not the complaint fails to state a claim upon which relief can be granted ?

ARGUMENT AND BRIEFPOINT I

CONGRESS HAS NO POWER TO FORCE PETITIONER TO BE A PARTICIPANT IN THE SOCIAL SECURITY ACT AND THUS DEDUCT FROM HIS WAGES A CERTAIN PERCENTAGE TO BE HELD IN ESCROW UNTIL THE TIME PETITIONER DESIRES TO RETIRE.

The issue respectfully submitted to this Honorable Court are both elementary and fundamental. It is not necessary to argue the manifold and obvious reasons in support of the petitioner's contentions that the Government illegally and without due process of law, deducted from his wages a percentage of his salary monies to be held in escrow until the time rolls around for petitioner to retire and then send him a monthly check earmarked as "retirement benefits", without petitioner's permission. This position is based upon the contention that it should be petitioner's option as to whether or not he so desires to retire and whether or not he so desires to seek retirement benefits. Petitioner so contends that he never requested to be a voluntary participant in said Act, nor had he ever requested the Government to deduct any such monies from his wages under said Act.

Petitioner submits that the Social Security Act is similar to a pension plan or insurance, but without any benefits of having the option to name any beneficiary in the event of his death. Under an insurance or pension plan, he would have such option, but in the case of Social Security, he would have no such option, but in event of his death, the Government is his beneficiary, which action is illegal, and without due process of law. In effect, petitioner is being forced to have a beneficiary without his consent.

POINT II

THE FEDERAL DISTRICT COURT HAS THE
JURISDICTION OVER THE SUBJECT MATTER.

Counsel for the Government in his answer, (Page 1, FIRST AFFIRMATIVE DEFENSE 1), states, "The Court is without subject matter jurisdiction)".

Petitioner calls this Honorable Court's attention to the Exhibit C, attached to the original complaint, wherein the Social Security Administration, states:

"The law does not provide for a refund of taxes correctly paid by the worker or self-employed person on earnings covered under social security. In order to challenge the law you would have to file suit in the Federal District Court".

Apparently Counsel for the Government attempts to disregard the statement by the Social Security Administration cited above, and advances his own theory with respect to the subject matter. This is without precedent.

Petitioner urges this Honorable Court to follow the dictates of the law, and treat his papers as an application for a declaratory judgment; and urges this Honorable Court made a declaratio n and adjudication of petitioner's rights under the laws and Constitution of the United States, with respect to whether or not petitioner as a Citizen of the

respect to whether or not petitioner as a Citizen of the United States and as a Taxpayer, whether or not he should have the option to be a free agent and decide for himself what is good for him and what is ~~bad~~ bad for him, and as to whether he desires to elect to accept retirement benefits.

Petitioner respectfully urges this Court to Title 28, Section 2201, of the United States Code, which creates a remedy for petitioner in an actual controversy, and that wherein it clearly states that any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal remedies of any ~~interested~~ interested party, seeking such declaration, whether or not further relief is or could be sought.

Any such declarations shall have the force and effect of a final judgment or decree, and shall be reviewable as such. (June 25, 1948, c.646, 62 Stat. 964, amended March 24, 1949, c. 139, Sec. 111, 63 Stat. 105).

Where an official's authority to act, depends upon status, of a person affected, that status when in dispute, may be determined by a declaratory judgment proceeding after exhaustion of administrative remedies. McGrath v. Kristensen, 340 U.S. 162(1950).

Under the Federal Declaratory Judgment Act, the existence of another remedy, does not bar remedy by declaratory judgment, if such remedy is appropriate/ Motor Terminals v. National Car.Co. 92 F.Supp. 155 (D.C. Del. 1949).

The Second Affirmative Defense of Government Counsel (page 2 of answer), is without a basis in fact or in law, and does not require a response, because petitioner has fully covered such answer in his Point II above .

POINT III

THE PRAYER FOR RELIEF IS PREDICATED UPON THE CLEAR FACT THAT PETITIONER, AND PETITIONER ALONE, SHOULD BE THE ONE TO DECIDE WHAT IS GOOD FOR HIM OR WHAT IS BAD FOR HIM. AND THEREFORE IS ENTITLED TO THE RELIEF HE SEeks HEREIN.

Respectfully Submitted,

Dated: New York, N.Y.
February, 9, 1976.

TO: UNITED STATES ATTORNEY
S.D.N.Y.

Carl Edelson,
Complainant-Petitioner.

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75 Civ. 4937 (LPG)

By: Stuart I. Parker
STUART I. PARKER
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

CARL EDELSON,

Plaintiff,

75 Civ. 4937 (LFO)

- v -

DEPARTMENT OF HEALTH, EDUCATION
AND WELFARE and SOCIAL SECURITY
ADMINISTRATION,

Defendants.

----- X

DEFENDANT'S MEMORANDUM IN SUPPORT
OF ITS MOTION FOR JUDGMENT ON
THE PLEADINGS

Plaintiff brings this action to recover in one lump sum all monies ever withheld from his wages as "social security deductions." The deductions to which plaintiff refers are Old-age, survivors, and disability ("social security") taxes imposed upon his income pursuant to the Federal Insurance Contributions Act ("F.I.C.A."), 26 U.S.C. §3101 et seq. Apparently, plaintiff considers his social security tax payments to be the same as employee contributions to a private pension plan. Thus, plaintiff contends that he has a vested or contractual right to receive from the

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Government a sum at least equal to the amount of social security taxes he has paid. He further contends that the Social Security Act is unconstitutional to the extent that it deprives him of choosing the time (now) and the manner (a lump sum payment) in which he will receive the sum to which he claims to be entitled.

Plaintiff's contentions ignore the holdings of the Supreme Court in Helvering v. Davis, 301 U.S. 619, 640-45 (1937); Flemming v. Nestor, 363 U.S. 603, 608-11 (1960); and Richardson v. Belcher, 404 U.S. 78, 80 (1971). See also Steward Machine Co. v. Davis, 301 U.S. 548 (1937). These cases leave no question that plaintiff does not have a property interest in the social security taxes he has paid or a right to dictate the time or manner in which he will receive social security old-age benefits.

In Flemming v. Nestor, *supra* at 609-10, Mr. Justice Harlan noted that:

The Social Security system may be accurately described as a form of social insurance, enacted pursuant to Congress' power to "spend money in aid of the 'general welfare,'" Helvering v. Davis, *supra*, at 640, whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents. Plainly the expectation is that many members of the present productive work force will in turn become beneficiaries rather than supporters of the

of the program. But each worker's benefits, though flowing from the contributions he made to the national economy while actively employed, are not dependent on the degree to which he was called upon to support the system by taxation. It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payments (Emphasis added).

In Richardson v. Belcher, supra at 80, Mr.

Justice Stewart stated:

In our last consideration of a challenge to the constitutionality of a classification created under the Social Security Act, we held that "a person covered by the Act has not such a right in benefit payments as would make every defeasance of 'accrued' interests violative of the Due Process Clause of the Fifth Amendment." Fleming v. Nestor, 363 U.S. 603, 611. The fact that social security benefits are financed in part by taxes on an employee's wages does not in itself limit the power of Congress to fix the levels of benefits under the Act or the conditions upon which they may be paid. Nor does an expectation of public benefits confer a contractual right to receive the expected amounts (Emphasis added).

SIP:jrs
d-209

In view of the foregoing, we submit that plaintiff's complaint should be dismissed for failure to state a claim upon which relief can be granted.*

Dated: New York, New York
March 9, 1976.

Respectfully submitted,

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Defendant

STUART I. PARKER
Assistant United States Attorney,

BORCH VARMER,
Regional Attorney,
Department of Health, Education and Welfare,

- Of Counsel -

* The Court also lacks subject matter jurisdiction over this claim for a tax refund because plaintiff has failed to comply with the provisions of 26 U.S.C. §7422. He has not made a refund claim to the Internal Revenue Service and has not named the United States of America as the defendant.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CARL EDELSON,

Plaintiff,

-vs-

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, and Social Security
Administration,

Defendants.
-----X

X

:

: 75 Civ. 4937

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: PLAINTIFF'S REPLY BRIEF

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X

STATEMENT

Counsel for Government has filed a Memorandum in support of his Motion for Judgment on the Pleadings, and noticed same before this Court at 4PM in the afternoon of March 23rd, 1976, in Room 301 therein.

It is the contentment and sole purpose of this memorandum to confine itself strictly to the issues involved, and therefore any failure of the plaintiff to reiterate any of the factual issues raised by him in his original complaint, shall not be deemed a waiver of the same.

If, as Government Counsel in his memorandum conclusion, states :

"The Court also lacks subject matter jurisdiction over this claim for a tax refund because plaintiff has failed to comply with the provisions of 26 USC § 7422. He has not made a refund claim to the Internal Revenue Service and has not named the United States of America as the defendant",

could be taken as a true issue, the plaintiff submits, that

this Court could take jurisdiction over the subject matter because, in all fairness, this Court could change the title of the subject matter to that for a Declaratory Judgment under the Federal Declaratory Judgment Act (28 USCA § 2201) which does in fact and in law create a remedy for plaintiff, where Counsel for Government is causing ~~anxieties~~ actual controversy and thus have the Court make an adjudication of plaintiff's rights and status with respect to the actual issue raised by him in his papers, that is:

"Whether or not the Congress of the United States of America, has the power and jurisdiction to force and compel the plaintiff or any of its Citizens to be an involuntary participant in the social legislation it has created by the Act 26 USCA 3101, by directing the Internal Revenue Service, which is an Agency of Government, to take from plaintiff a certain percentage of his earnings and under the guise of putting this monies away in a fund for plaintiff's old age ??

POINT I

THE DECISIONS CITED BY GOVERNMENT COUNSEL IN HIS MEMORANDUM DOES NOT DEAL DIRECTLY WITH PLAINTIFF'S CONTENTIONS AND ARE NOT EVEN REMOTELY IN POINT WITH THE FACTS AT BAR. AND THEREFORE, THIS COURT SHOULD MAKE IT'S OWN RULING THEREIN.

Plaintiff respectfully reiterates that he, being a person of sound mind and over the age of consent, has the legal right to decide for himself whether or not he desires any help from the Government with respect to retirement benefits. If, as counsel suggests by the decisions cited by him, that he has no vested right in the monies deducted from his wages, then the Government by the same token, has no legal or vested right in his earnings.

Where Government Counsel suggests that the plaintiff should sue the Internal Revenue Service for a refund of his monies and make the United States of America a part of the proceeding and not the Social Security Administration, illustrates a marked tendency in recent times for District Attorneys to ignore those remarkable and truly precious safeguards of Democratic Liberty, the procedural and Constitutional requirements particularly distinctive of our Anglo-American Jurisprudence known as "Due Process of Law". It is time that this dangerous drift was stopped.

One fact stands out sharp and clear, that is, that the Government is not disposed to take plaintiff's arguments very seriously, and attempts to dispose of them in a cursory manner. With his property (deductions from lifetime earnings) at stake, apparently a lot is being taken for granted. It would seem from a close scrutiny of Government's arguments, upon this prayer for relief, from an anomalous situation, that the Counsel for Government (psychologically in keeping with the aforementioned drift) having satisfied himself in his mind that plaintiff is right, is in fear, that if this Court renders a decision in favor of plaintiff, that to the effect the Government cannot legally force plaintiff in being a participant in the Social Security Act, then the very foundation of the Act itself is in jeopardy and will collapse. Such theory has no basis in fact or in law. Plaintiff is entitled as a matter of fact and law to make his own plans for the future and decide for himself what he wants.

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POINT II

THE FACTS ARE NOT CONTROVERTED. THE
CONTROVERSY BEING THE APPLICATION OF
THE LAW TO THE FACTS.

Indeed, the facts in the case at bar cannot be ~~be~~ ^{controverted.}
The controversy being the application of the law to the facts.
It is respectfully submitted by plaintiff, that there is not
one related case ever handed down in any Court of the United
States, directly to plaintiff's arguments. There is only one
issue, and one issue only, that is:

"Does the Government (call it the Social
Security Administration, or Internal Revenue
Service) have the lawful authority to force
any Citizen to become a participant in such
Act without his permission ?

Plaintiff contends that ~~it does not~~. No one could force
any Citizen to do an act if he does not want to. Plaintiff
should have his own choice to decide whether he wants to
contribute to such act and thus if he dies, that the Government
should be his beneficiary. This, plaintiff alleges is without
due process of law and unconstitutional.

Therefore, this Court should follow the dictates of the
law and render judgment accordingly to its own conscience.

Respectfully submitted.

Dated: March 17, 1976.

Carl Edelson,
Plaintiff in Person

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

CARL EDELSON,	:	
	:	75 Civ. 4937
Plaintiff,	:	
	:	MEMORANDUM
-against-	:	<u>DECISION</u>
	:	
DEPARTMENT OF HEALTH, EDUCATION	:	
AND WELFARE and SOCIAL SECURITY	:	
ADMINISTRATION,	:	
	:	
Defendants.	:	

- - - - -x

GAGLIARDI, D. J.

Carl Edelson, the 64 year old pro se plaintiff, sues to recover social security taxes which he has paid throughout his working life. The essence of Mr. Edelson's complaint is that since he is willing to forego social security benefits for the rest of his life he should now be permitted to withdraw from the United States Treasury all monies which he paid to it in Social Security taxes. The government has moved pursuant to Rule 12(c), Fed. R. Civ. P. for judgment on the pleadings. Both sides admit there is no genuine issue of material fact and that the question raised by the complaint is merely a legal one.

Although this Court has some sympathy for Mr. Edelson's feeling that he should be entitled retroactively to opt out of the Social Security system, this certainly is not what Congress intended. 26 U.S.C. § 3101, which imposes

the social security tax on employees, is clearly a tax not a voluntary contribution which may be withdrawn at an employee's option. Like any other tax imposed by the federal government, it must be paid whether or not the taxpayer wishes to avail himself of the public benefits on which the revenues derived from the tax are spent. The constitutionality of this particular tax was sustained by the United States Supreme Court in Helvering v. Davis, 301 U.S. 619 (1937) two years after it was first enacted. As Justice Cardozo there stated:

Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here is with power, not with wisdom. . . . When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress. . . . 301 U.S. at 644-45.

Here Congress has decided to impose a tax on employees' wages for the purpose of obtaining revenues to fund a social security system. Payment of the tax does not give the taxpayer any contractual or other rights to the revenues collected except as provided by the Social Security Act, 42 U.S.C. §401 et seq. (1974), and related statutes. Fleming v. Nestor, 363 U.S. 603, 608-11 (1960); Richardson v. Belcher, 404 U.S. 78, 80 (1937). While Congress could have made participation in the Social Security System optional, it did not choose to do so.

Defendant's motion for judgment dismissing plaintiff's complaint pursuant to Rule 12(c), Fed. R. Civ. P. is thus granted.

So Ordered.

Isidore P. Bayliardi
U.S.D.J.

Dated: New York, New York
May 5, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL EDELESON, -----

Plaintiff

-against-

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE, AND SOCIAL
SECURITY ADMINISTRATION,

Defendants.

X INDEX: 75 Civ 4932

: NOTICE OF APPEAL
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SIRS:

PLEASE TAKE NOTICE that the above named Plaintiff,
CARL EDELESON, hereby appeals to the United States Court of
Appeals for the Second Circuit, from the Order and Judgment
rendered May 5, 1976 and entered in the Clerk's Office on
May 12, 1976, by the United States District Court for the
Southern District of New York (GAGLIARDI, D.J.) in the above
numbered Civil Cause; and Plaintiff appeals from each and
every part of said decision and order therein.

Dated: NEW YORK COUNTY
NEW YORK,
MAY 16, 1976.

TO: Clerk of Above Court;
United States Attorney,
S.D. N.Y.

Clerk, U.S. COURT OF APPEALS,
SECOND CIRCUIT.

Yours, etc.

Carl Edelson

CARL EDELESON-Pro Se,
Plaintiff
151 West 16th Street,
New York, N.Y. 10011
Tel: 255-3138

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MATTER OF

AL EDELSON,

Plaintiff-Appellant,

-against-

U.S. DEPARTMENT OF HEALTH, EDUCATION AND
WELFARE, AND SOCIAL SECURITY ADMINISTRATION,

Defendants-Appellees

X

APPEAL DOCKET NO. _____

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FROM THE U.S.D.C., S.D.N.Y.
GAGLIARDI, D.J. 75-Civ.4937

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Notice of Appeal

CERTIFICATION OF RECORD ON APPEAL

This will certify that the papers enclosed herewith
are copies of the originals on file in the U.S.D.C.

Clerk of U.S.D.C.
S.D. NY